

Member, Joint Committee on Finance Chair, Committee on Children and Families

Testimony Before the Assembly Committee on Children and Families October 7, 2009 Assembly Bill 462

I would like to thank Committee members for hearing my testimony today on Assembly Bill 462. I would also like to take this opportunity to thank Representatives Seidel, Sinicki, Berceau, and Kestell for cosponsoring this bill.

When I was before you last week testifying on Assembly Bill 412, the Shares LLC bill which we just voted on, I mentioned to you that there was additional legislation forthcoming to continue to address inadequacies that have been uncovered in our current child care regulations. This bill is another one of those efforts and focuses on the licensing of child care providers.

AB 462 protects families and their children from unsafe providers by ensuring that providers with criminal backgrounds and abuse of public assistance programs may not receive Shares payments and most importantly, may not be licensed or certified to care for children. Specifically:

- Provides DCF explicit statutory authority to ensure that child care providers, their employees and anyone living at a child care residence must not appear on the sex offender registry.
- Permanently bars child care providers from licensure who are convicted of certain criminal offenses. Current statutes allow providers to undergo rehabilitation and relicensure or re-certification after even the most egregious crimes have been committed.
- Any provider or employee who provides false information on a required background check form is permanently barred from child care licensure or certification.
- Immediately suspends Wisconsin Shares payments if a provider is under investigation for one of the listed offenses.
- Ensures that those who steal from Wisconsin Shares or another public assistance program may not be licensed or certified to provide child care.
- Requires more frequent state reviews of licensed and certified child care providers. Once every four years is simply not enough and DCF will have the capability to review licensed providers every three months. Child care providers will need to review their employees at least once per year.

These important changes will give every parent the peace of mind that their children are being cared for in a safe environment by responsible caregivers.

I thank the committee for your time and consideration of this matter. I am happy to answer any questions Committee members may have.





Majority Caucus Chairman

October 7, 2009



Co-Chair, Joint Committee on Audit Committee on Financial Institutions Committee on Jobs, the Economy & Small Business

Assembly Committee on Children and Families

Assembly Bill 462

Representative Peter Barca

Chairwoman Grigsby and members of the Assembly Committee on Children and Families, thank you for holding a public hearing on Assembly Bill 462, which will address some of the flaws that have come to light in the Wisconsin Shares Child Care Subsidy Program.

As many of you are aware, I serve as Co-Chairman of the Joint Legislative Audit Committee. The committee's first and highest priority when I took over the chairmanship was an audit of the Wisconsin Shares program. Following the documented cases of fraud uncovered in newspaper stories, the committee received requests from a large, bipartisan group of 86 legislators led by Representative Grigsby, Representative Vos and Senator Jauch, and my committee acted quickly to direct the Legislative Audit Bureau to conduct a comprehensive audit of the program.

Due to the scope of the issues involved in the Wisconsin Shares program, Senator Vinehout and I worked with the State Auditor and Legislative Audit Bureau to develop a two-phase audit approach. The first phase of the report by the Legislative Audit Bureau was released in June and focused on the scope of the problems with fraud and other issues within the Wisconsin Shares program. My committee followed up by holding a public hearing on the report where we thoroughly questioned Department of Children and Families Secretary Reggie Bicha on what steps the Department has taken to end waste and fraud.

The second phase of the audit is due to the committee before the end of this year. This piece will examine on-going reforms currently being implemented and suggest areas where further reform is necessary. At that time we will review what further legislation may be necessary.

While the audit process is taking place I believe we must continue to be proactive. We must be sure that under this program children are protected and that taxpayer's dollars are not wasted. This bill takes several large steps toward continuing to shore up the integrity of the Wisconsin Shares program. It ensures in statutes that DCF must crosscheck the sex offender registry for potential name and address matches with child care providers, bolsters the background check process and requires more frequent reviews of providers, adds additional offenses to the list that bars individuals from being certified and prevents individuals guilty of public assistance fraud from participating in the program, and immediately suspends payments to providers who are under investigation for criminal behavior.

When Governor Thompson created this program his intention was to provide child care support to working parents so that they could move off welfare and go to work every day. I believe that this is a goal that we all can support, and I personally remain committed to working with legislative committees, law enforcement, and local and state officials to determine what further modifications may be needed in statute, regulation, implementation or internal controls to ensure that both the children and taxpayers are protected.

Finally, I again thank the Chair for her leadership on this issue, I thank all of you for your time today and I hope that we can count on your support on Assembly Bill 462 comes for a vote before this committee.



Senator Jauch Testimony on Senate Bill 331 Child Care Regulation October 7, 2009

As a parent, nothing is more important to me than knowing my children are safe. Because caring for children is one of our most basic responsibilities as a society, we must be sure that the people charged with this important task when parents must work are honest, trustworthy and safe. While the vast majority of child care providers represent these values, we have become painfully aware of some people around the state taking care of children who should not be because of criminal backgrounds.

The people who care for children when parents work must be held to higher standards, and our current laws are woefully inadequate to accomplish this. We must taken action now. Department of Children and Families Secretary Reggie Bicha and his staff have worked diligently to not only track fraud and abuse in the Wisconsin Shares Program, but have also been focused on more thorough and frequent background checks on providers. They recognize that assuring providers do not have criminal backgrounds, jeopardizing the safety of children in their care, is directly connected to efforts to eliminate fraud and abuse in the Shares program. But they also see the need to hold all providers accountable to these standards, not just those receiving taxpayer dollars to care for children from low income families.

While the Department is taking these important steps, the Legislature must commit to changes in the law that will require these ongoing efforts. Current law only requires a provider to undergo a background check *once every four years*. Yet these people are responsible for children's safety and could go years caring for them while a serious criminal conviction goes unnoticed. This is simply unacceptable. The Department now has the capability to perform these checks on providers once every three months and our laws must reflect this.

Recently the Audit Bureau released findings that during a cross check of child care providers in the state and addresses of registered sex offenders, the addresses of four sex offenders matched those of day cares. The Department acted quickly on this information and staff confirmed that sex offenders were not actually living at these addresses and no children had been harmed. However, as strict as our state laws are regarding sex offenders, the statutes do not require that

child care provider background checks include a search of the sex offender registry. To his credit, Secretary Bicha has instituted this policy and the Department will continue to actively search for sex offenders among child care providers. However, the fact that our laws do not make this an explicit requirement is unacceptable.

This legislation takes these and several other important steps to keep our children safe in child care. It ensures that if a provider is convicted of certain criminal offenses, he or she will be permanently barred from licensure. Current law allows a provider convicted of any offense to demonstrate rehabilitation and become licensed or certified. Providers must perform background checks on their employees every year, rather than the current four year requirement.

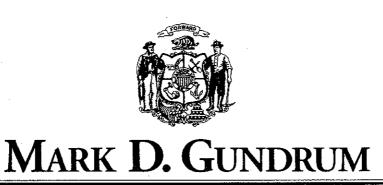
This legislation also makes the critical connection to improving the integrity of the Wisconsin Shares Program by permanently barring from licensure or certification any provider or participant who steals from the program. This is another step to make the message clear that fraud and abuse are not tolerated by the State of Wisconsin. It will also allow the Department to immediately suspend Shares payments to any provider under investigation for a criminal offense.

I commend Secretary Bicha and his staff for their outstanding efforts to improve child care for all children. I am also pleased to continue working closely with Representative Grigsby, who has been a passionate advocate for improved quality in child care and protecting our taxpayer dollars. The Legislature must be partners in this endeavor and support real and lasting change.

A great deal of progress has been made and this legislation will add to the list of reforms that will restore integrity to the Wisconsin Shares Program and ensure quality child care for all children in the state. We must not avert our attention from this issue, but rather continue to look at ways to improve the system. I have pledged my commitment to this task.

Please join me today in supporting all the change that has happened and all the change that now needs to happen. We must stand together to send the message that the nothing rises above the safety of our children.





STATE REPRESENTATIVE

Testimony of Representative Mark Gundrum before the Assembly Committee on Children & Families October 7, 2009

Rep. Grigsby, members of the Committee, thank you for the opportunity to testify before you this morning on the important issue of reforming the Wisconsin Shares program.

Over the past year, the Milwaukee Journal Sentinel newspaper has done a great service to the citizens of this state with its thorough investigative reporting on the very significant flaws in the Wisconsin Shares program. Article after article written by reporter Raquel Rutledge has exposed and detailed many of those flaws - from the dangerous situations many children in the program are placed in, to the bilking of the taxpayers resulting from fraud by participants in the program, to the bureaucratic culture where government workers do not feel any responsibility toward the taxpayers who pay their salaries and turn a blind eye to obvious wrongdoing in the program.

The citizens of this state want real reform of the WI Shares program. They don't want window dressing. No, the citizens of this state want real reform that will put significant measures in place to prevent dangerous individuals from participating in the WI Shares program and prevent the outrageous bilking of the taxpayers. And they want less discretion left up to state bureaucrats who have proven themselves poor guardians of Wisconsin's children and the taxpayers' money.

To that end, Sen. Darling and I began working back in June on legislation that would provide precisely the type of oversight being sought by the citizens of this state. While Sen. Darling and I wish AB 479 and SB 333 were the bills being afforded hearings in the Assembly and Senate today, we understand the political reality that a different party controls both Houses and therefore we are not at liberty to advance the bills we wish to advance. Because of that, we are here today to discuss AB 462 and SB 331.

AB 462 and SB 331 do make some improvements to WI Shares; however, much more could and should be done to protect children in the WI Shares program and the taxpayers of this state. I would like to highlight some key areas where amendments would be most appropriate to make this bill as strong as possible, so we can truly protect children in the program and taxpayers, not just pass a bill to say we did something.

Financial Crimes Not Covered by AB 462 and SB 331. AB 462 and SB 331 does prohibit persons who have been convicted of defrauding the Wisconsin Shares program from participating in the program in the future. That's a good first step. What members of this committee should also consider including as crimes that would preclude someone from participating in the WI Shares program are other felony fraud crimes that give a clear indication that an individual is someone who should not be participating in this taxpayer funded program. For example, do we really want individuals who have been convicted of fraudulent insurance and employee benefit program claims, fraud against a financial institution, loan fraud, or identity theft to be eligible to receive tax dollars through the WI Shares program. I would hope not and I would encourage members of this committee to amend the bill to address such situations.

Length of Time Before Certain Persons Eligible for WI Shares. AB 462 and SB 331 provide that persons are not eligible for a child care license or participation in the WI Shares program for five years *after committing* certain felonies. Of course Sen. Darling and I would prefer to see the stronger approach we take in our bills adopted for AB 479 and SB 333, by prohibiting eligibility for longer periods of time based upon the severity of crimes committed and whether the person is a first-time offender or a repeat offender. However, we again realize that we don't control the committees or the majorities in either House.

We would encourage members, however, to give serious consideration to the following: AB 462 and SB 331 purport to prohibit persons convicted of certain felonies from being licensed as a child care provider and participating in WI Shares for five years *after committing* the offense at issue. We would encourage members to consider adopting the approach Sen. Darling and I use in AB 479 and SB 333. In our bill, we have the five year (or in some cases ten year) waiting period before eligibility start once the offender has *completed his or her full sentence*, not from the date they committed the crime at issue.

For many of the crimes covered by this five year period in AB 462 and SB 331, the offender in question could be sentenced to more than five years in prison, thus making them eligible for a child care license and participation in WI Shares the moment they walk out of prison, indeed, while they are even still on extended supervision. This effectively nullifies the whole five year provision in the first place.

For example, if a person is convicted of causing death to a minor by providing the minor with alcoholic beverages, that person could receive a sentence of five years in prison and five additional years of extended supervision. A person convicted of homicide by intoxicated use of a vehicle or firearm could be sentenced to 15 years in prison and 10 additional years of extended supervision. A person convicted of manufacturing or dealing 40 grams or more of cocaine could be sentenced to 25 years in prison and 15 additional years on extended supervision. A person convicted of manufacturing or dealing less than 1

gram of cocaine could be sentenced to five years in prison and 5 additional years of extended supervision. *In each of these cases, under AB 462 and SB 331 that person would be eligible to receive a child care license and receive tax dollars through the Wisconsin Shares program the day after they walk out of prison.* While the Department may have the discretion to not issue a child care license to such individuals, under AB 462 and SB 331, they also would have the discretion *to issue* licenses in such circumstances. Given the Department's track record to date, it is this type of discretion that the citizens of Wisconsin do not want left in the hands of these bureaucrats.

If we really want the legislature to have a say regarding which convicted criminals will be eligible to be licensed to provide child care and participate in Wi Shares, we should amend this language so that this five year period, if that is what you wish to stick with, begins when the offender's full sentence is successfully completed, not when the offender committed the crime.

Mandatory Reporting. The bill Sen. Darling and I have introduced includes a very key provision for reforming the culture in the bureaucracies involved in running WI Shares. It is called mandatory reporting. The Milwaukee Journal Sentinel articles of the past few months have highlighted a culture in the government bureaucracies responsible for running WI Shares which takes an "it's not my problem" attitude at best.

The Milwaukee Journal Sentinel won't be able to continue funding such thorough investigative reporting forever. That is why it is absolutely critical to change the culture in these agencies.

Without significant reform of the culture in these bureaucracies, as soon as the media spotlight fades, we will be back to the problems that brought us to where we are today. Only it is unlikely the citizens of this state will be fortunate enough to have the problems uncovered. Instead, the bilking of the taxpayers and fraud will slowly resume and the danger children are placed in will slowly increase. That is why enacting a mandatory reporting requirement similar to what Sen. Darling and I have drafted in AB 479 and SB 333 is absolutely essential to provide meaningful reform of the WI Shares system. Simply put, that provision would require that those involved in the WI Shares program report suspected fraud to the district attorney. In addition to providing a penalty for failing to do so, the language we drafted would provide protections for workers who do the right thing and report the fraud. We hope you will consider adding such a provision to AB 462 and SB 331. We would be more than happy to work with members on either side of the aisle to accomplish this.

The public is crying out for real reform to the WI Shares program. I encourage members of this committee and the full Legislature to find the political Will to give it to them. Thank You.



Testimony -- Assembly Committee on Children and Families October 7, 2009

Chairperson Grigsby and members of the committee:

Thank you very much for holding this public hearing on an issue that I believe warrants the immediate attention of the Legislature. That is, better oversight of the Wisconsin Shares program.

I applaud Rep. Grigsby and Sen. Jauch for their efforts to get a better handle on this program through the introduction of SB 331 and AB 462. These companion bills make strides towards improving protections for kids and taxpayers. Having said that, I would like to point out two important elements that I believe should be considered by this committee as the bill moves forward.

First, I think it is of paramount importance to require a convicted criminal complete his/her sentence and appropriate waiting period before they are allowed to petition for reinstatement of a childcare license. If I understand SB 331/AB 462 correctly, a criminal may serve five years for example and upon release, argue he/she has been rehabilitated and is worthy of a childcare license. That sends the wrong message. The bill I introduced with Rep. Gundrum places more emphasis on the rehabilitation of a person by requiring them to complete an entire sentence including supervision and then the waiting period of 5 or 10 years begins before they can pursue licensure.

Secondly, I believe it's tremendously important to add a requirement for mandatory reporting of fraud for the employees responsible for administering the program. The Milwaukee Journal Sentinel and the Legislative Audit Bureau have helped to identify a willingness by some employees to overlook obvious red flags in the program. Making these employees mandatory reporters would help turn around this culture of indifference. At the same, you can protect employees from retribution from others by including the state's whistleblower protections. This is the approach Rep. Gundrum and I took when drafting SB 333 and AB 479. If you would like us to get you that exact language, we would be happy to do so.

Thank you again for your time. I appreciate the opportunity to be heard.

Sincerely,

ALBERTA DARLING State Senator – 8th District Summary Testimony from Renae Henning, Administrator Community Care Preschool & Child Care, Inc. Beaver Dam representing the Wisconsin Child Care Administrators Association October 7, 2009

The bill as written states that licensees of child care centers must have a background check run every 90 days, and all others (caregivers and others who live in a home center) will have a check once every year.

While WCCAA is advocating for increased checks, we advocate for a six month interval rather than every three months. Right now the department runs checks on childcare employees every four years (too long), but these bills increase this amount to **sixteen** over four years, instead of one. Instead, we feel caregiver checks could be done once each year, or every two years.

Statistics: There are approximately 35,000 child care workers in Wisconsin; therefore, during a four year period there are about 35,000 record checks done. This new bill would require 140,000 record checks during the same time period (four years). In addition, DOJ recently increased the cost of a record check by 100% to a minimum of \$10 per check and costing as much as \$18 per check. With the increased number of background checks going up by 105,000, this will cost the industry more than \$1,050,000 minimum in an industry that already is tapped out financially.

There are more than 8,500 group and family centers in Wisconsin this year. Currently, DCF runs a check every four years (again too long). With the increase in checks to four a year, this amounts to 34,000 checks a year on 8,500 licensees. Over a four year period, DCF is currently running 8,500 checks; how can they run 136,000 checks or **127,500 more** checks in the same amount of time (four years)? How is DCF going to do this logistically?

In Wisconsin, we are ranked number 6 in the nation for licensing standards, but we are ranked number 41 in enforcement of those standards. This is unacceptable. Best practices in child care call for 1 licensor to handle 50 centers a year. The case load in Wisconsin is now almost 113 centers per licensor. In addition, licensing staff now have to help with fraud detection by increasing what they do when monitoring centers (at best, the licensors visit each center once or twice a year). Now we are asking the limited staff to run 127,500 additional background checks every four year period - don't they have enough to do already? DCF licensing does not operate efficiently or consistently now - how can we ask them to add to their workload until we get that workload to an acceptable, efficient level?

Questions:

How can DCF handle an increase of 127,500 background checks every four years (as compared to 8,500 currently)?

How are all these checks going to be paid for? The industry does not have more than a million dollars to pay out for these checks. Is the state going to pick up the costs of these additional checks? At this time centers are billed for these checks, \$10 a piece.

Are we going to hire more licensing staff to help move toward better standards rather than ranking 41st in the nation?

How often are background checks required for public school teachers? Are they required at minimum once a year? Why is the child care work force again being singled out?

While we support an increased frequency of background checks in Wisconsin, let's not jam these bills through the legislature, but take our time to do the right thing. Let's take time to look at the issues and discuss them, and fix the potential ramifications of this bill before we pass the bill.

Doing knee-jerk "fixes" usually do not benefit the state or the industry. Rather, we need to take a hard look at the issues and discuss those issues so that there can be a smooth handling of the bill that eventually passes.



Testimony on AB462

Chairperson Grigsby and members of the Assembly Committee on Children and Families, I would like to thank you for the opportunity to provide written testimony today in response to Assembly Bill 462. My name is Ruth Schmidt and I am the executive director of Wisconsin Early Childhood Association (WECA). WECA believes that all children should have the opportunity to be cared for in a safe and nurturing environment. In fact, program safety is a critical and foundational component of high-quality child care. Thus, we fully support the emphasis on improving safety in child care programs within AB462. We do worry about the potential implications of including children as young as 12 within the 5 year waiting period for crimes listed under item number 6 on the LRB summary. As 12-17 year olds are not developmentally capable of making good decisions at all times, it seems reasonable to decrease this waiting period to 2 years if the offense (any listed in item 6) was committed before the age of 18.

WECA also supports more frequent monitoring and accountability of providers. No parent should learn that their child has been cared for in the same home that a sex offender resides. We are concerned, however, about the financial burden that this bill places on programs as they are required to perform annual background checks on their employees over the age of 18. If the state does not assume the cost of these background checks (or perform the checks themselves), a number of unintended consequences may arise including:

- Child care programs utilizing good business practices will likely pass the cost of these background checks on to parents through increased fees or co-pays. In these tough economic times, many parents cannot afford to pay more than they already are.
- Many programs accepting Wisconsin Shares children have difficulty collecting co-pays from
 parents, leaving them with the responsibility of assuming these costs. By increasing co-pays to
 pay for annual background checks, programs will lose more money. Numerous high-quality
 programs will be financially unable to accept Wisconsin Shares children- the children who could
 benefit most from high-quality care- and these children will be moved to lower quality facilities.
- Child care programs who already have limited resources may be forced to choose between paying for background checks and paying for things like staff training.

WECA urges the Committee on Children and Families to consider this information while discussing Assembly Bill 462. As always, we would be happy to provide further information or commentary on this topic- or any related to early care and education. We are pleased that the Wisconsin legislature is taking steps to improve the quality of child care throughout the state and thank you again for your time and consideration.



To: Members of the Assembly Children and Families Committee and

Senate Children and Families and Workforce Development Committee

From: John Grabel, AFSCME Council 11 Government Relations

Re: Assembly Bill 462 and Senate Bill 331

Date: October 7, 2009

This memo serves as a companion to our testimony. AFSCME is generally supportive of AB 462 and SB 331, however there are a few areas of concern AFSCME represented Family Child Care Providers have identified. Most of these concerns are in regards to practical implementation of the bill, and may require no legislative remedy as they can be dealt with by the Department of Children and Families. We did, however, find it important to present these items to the committee and enter them into the public record should they rise to a greater concern in the future assuming the bills are passed into law.

- 1) In implementing AB 462 and SB 331 we ask that DCF allow providers to find a remedy for either removal of an employee who fails a criminal background check from the provider's employment, or relocation of the child care facility if a resident of the provider's household fails the background check. We ask that in practice these remedies be explored prior to revocation of the license or certification.
- 2) AFSCME members are concerned about the turn around time on the BID forms for providers in the process of having the license or certification renewed. Currently DCF and/or counties have experienced backlog with the current requirement of performing the check once every four years. This has resulted in delaying recertification which in turn results in delaying Wisconsin Shares payments. With more frequent background checks we are seeking assurances that DCF will be able to process BID forms in a timely manner.
- 3) Recently we have run into instances where some municipal zoning ordinances do not allow a Family Child Care provider to run their program at a residential property that is not the provider's primary residence. In these areas providers who have someone in their home commit a felony will be severely limited in their ability to move their program to continue providing care and maintaining their income. We are looking at various solutions to this issue, including a potential legislative remedy, as it has arisen in different areas of the state recently.
- 4) Recent legislative changes have granted DCF significantly increased powers to combat fraud, and this legislation will certainly add to the protection of children in child care facilities. However, many of these changes increase the demands on provider's time outside of caring for children, as well as money to comply with new requirements. However, Wisconsin Shares payments are still frozen at 2006 levels (when most providers outside of southeast Wisconsin saw their payments reduced), and will remain so until at least 2011 under the current biennial budget. The legislature and DCF need to be cognizant of the fact that each change, absent any increase in reimbursement rates, only pushes more and more providers to unregulated care.